

WEST ST. PAUL COMMITTEE OF ADJUSTMENTS

The regular meeting of the West St. Paul Committee of Adjustments was called to order by Chair Hubert on Tuesday, June 21, 2016, at 7:00 p.m. in the Municipal Center Council Chambers, 1616 Humboldt Avenue, West St. Paul, Minnesota, 55118.

ROLL CALL

Present: Chair Hubert and Commissioners Fernandez, McPhillips, Leuer, Nelson (7:16 p.m.) Kavanaugh, and Ramsay.

Absent: None.

Also Present:

Assistant Community Development Director Boike and Council Liaison Bellows.

APPROVE MINUTES

ON MOTION of Fernandez, seconded by Ramsay, RESOLVED to approve the West St. Paul Committee of Adjustments meeting minutes of Tuesday, May 17, 2016 as written. Ayes: 6 Nays: 0 Abstain: 0

PUBLIC HEARINGS

CASE # 16-02

Application for a Variance to Allow a Reduction in Setback to a Residential Property For an Essential Service Structure in an R1 District at 1365 Bidwell St. – St. Paul Regional Water Services

Assistant Community Development Director Boike advised that the applicant, St. Paul Regional Water, has requested that the application be continued an additional month while they work on the information the Committee of Adjustments requested at their last meeting. He noted that the 60 day deadline has been extended an additional 60 days which requires a decision now be made by August 19, 2016.

ON MOTION by Fernandez, seconded by McPhillips, the Committee of Adjustments continued Case #16-02, Application for a Variance to allow a reduction in Setback to a Residential Property for an Essential Service Structure in an R1 District at 1365 Bidwell St., until the July 19, 2016 meeting upon the request of the applicant.

Ayes: 6 Nays: 0 Abstain: 0

(Commissioner Nelson was absent at the time of voting)

CASE # 16-04

Application for a Variances to Allow a Reduction in Minimum Lot Width for a New Lot at 260 Edgewood – Sylvia Dorsey

Assistant Community Development Director Boike reviewed the staff memo regarding a variance request by Sylvia Dorsey to allow a reduction in minimum lot width for a new lot at 260 Edgewood. Included in the commissioners' packets were a draft resolution memorializing the findings of facts should the committee approve the variances, a copy of the application, a lot sketch, the notice of public hearing, and a letter from Dianne Hopen, 250 Edgewood Lane, detailing concerns regarding the application from the Dorsey's for a variance in creating a new lot. Staff recommended

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approval of the variances subject to the conditions that the applicant apply for an administrative plat review to subdivide the new lot per the submitted plat plan within one year of the approval, and that should application of a building permit be submitted in the future for the construction of a new home on the newly create lot, the applicant shall submit property drainage plans to mitigate any potential impact to neighboring property owners.

Asst. Director Boike advised that staff received a phone call from a neighboring property owner with concerns regarding drainage. Another neighboring property owner emailed stating she was opposed to the variance citing potential loss of tree coverage as an issue. A copy of the email was provided in Commissioners' packets. Asst. Director Boike noted that while tree coverage was desired by neighboring properties, the Code did not prohibit clearing of trees in residential districts. He also noted he received a voicemail stating there may be a few residents wishing to speak at the public hearing.

Commissioner Fernandez confirmed the existing driveway for the subject property was on Edgewood, confirmed driveway access to neighboring properties, and asked whether the variance for minimum lot width would result in future variances for setbacks if a home is constructed. Asst. Director Boike advised that the zoning district has 30 foot front and rear yard setbacks and 10 foot side yard setbacks which would create the building footprint if a house were constructed. He confirmed it may potential minimize the size of the house but potential use as a single family residence would be consistent with the neighborhood.

Commissioner Ramsay requested clarification of photos in the staff memo and topography. Asst. Director Boike explained the slope issues and noted that a future home may have to be built into the hill or include a significant retaining wall.

Commissioner Kavanaugh stated he was opposed to granting a variance for the lot and later receive additional variance requests for setbacks. He asked whether the lot was buildable as it sits. Asst. Director Boike advised that the applicant has not gotten to the planning stage so staff was unsure whether the lot was buildable in its existing condition but noted the lot size would still be 17,000 sq. ft. which is above the minimum lot size required.

Commissioner McPhillips asked whether it was unique to have access to two different roads and whether there would be more subdividing of larger lots in the future. Asst. Director Boike

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confirmed it was unique and advised that staff has seen a number of lot splits. He noted that if lot splits meet the minimum lot criteria, a lot split is accomplished administratively and Council approves of the split via Consent Agenda.

Chuck Dorsey, 260 Edgewood, applicant

Mr. Dorsey stated he was in the process of downsizing and would like to keep his options open to either sell as one or two lots. He stated the proposed lot required some site development but builders have indicated it could be a buildable lot.

Commissioner Fernandez confirmed with Mr. Dorsey that no formal blue prints have been prepared and the size of a potential home was not discussed.

Chair Hubert opened the Public Hearing at 7:18 p.m.

Eric Schubert, 280 Edgewood Ln.

Mr. Schubert stated he has talked with neighbors about the proposal and has 22 neighbors on Edgewood and Sherwood that oppose the variances. The issues cited include yard or open space minimum requirements, potential loss of natural buffer and habitat, and existing drainage issues. He stated the difficulty or hardship is the owner's burden and because the code doesn't work for the owner, the code shouldn't be changed for one property. Splitting the lot and sale would cause irreparable harm to Edgewood and Sherwood neighbors. He cited page 56 of the Comprehensive Plan noting natural resources in the city are extremely valuable and a lot split would contradict the Plan if tree clearing occurred. Mr. Schubert added that there is a significant drainage issue coming from the hill and if clearing occurs, the water would need to go somewhere thereby increasing the existing issue. He added that if the variance is granted, it may open up possibilities for other variances and he was opposed to altering the neighborhood as it exists. Mr. Schubert concluded stating that allowing the variance would benefit one property owner and their pocket book but would cause harm to the other 22 neighbors and requested the Committee deny the variance.

Commissioner McPhillips asked how many people live on Sherwood and confirmed that neighbors didn't want to see a new house constructed. He also asked whether a curb cuts exists in that location now. Mr. Schubert responded there were about 12 families so about 30 people and confirmed one aspect of opposition was because he didn't want to see a house built. Asst. Director Boike noted there was not a curb cut already in place.

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Colleen Loney, 273 Sherwood Ct.

Ms. Loney stated her house was adjacent to the subject property. She expressed concern with the drainage issue noting standing water on the street for at least three years and if digging occurred on the property, her home would suffer additional water runoff. She asked the City to find out why the water was there and what the City intends to do about it before any development occurs.

Treece Marso, 270 Edgewood Ln.

Mr. Marso apologized for any inconvenience to the Dorseys and thanked the Schuberts for spearheading a neighborhood concern. She echoed Mr. Schubert's statements and provided a brief introduction to how she came to the City. She stated that neighbors enjoyed the large trees and lot sizes and that property owners are paying a premium in taxes on their lots but they are willing to pay because of the setting. Ms. Marso stated the Dorseys have enjoyed the beauty, acreage, and vegetation for years and it should be more than one person's request to maximize profits and should take the neighborhood's concerns into consideration. She concluded that she would like to maintain the nature and was concerned with the potential trend for the neighborhood.

Mary Werner Schubert, 280 Edgewood Ln.

Mrs. Schubert requested to display various photographs of the area. She presented a PowerPoint presentation with a topic of Square Peg in a Small Round Hole. Various photographs were displayed showing limited space, water runoff, pooling on the entire street, and erosion. Mrs. Schubert stated the variance would alter the essential character of the neighborhood and asked the Committee to think about how the variance would improve the neighborhood. She requested the Committee uphold the current zoning regulations and oppose the variance request noting it was obvious the applicant was only looking to make money.

Commissioner McPhillips noted that both lots on either side are approximately the same width. He asked Mrs. Schubert's opinion if those neighbors also requested a variance. He also noted that even if nothing was built, there would still be a drainage problem. Mrs. Schubert responded that if this variance is granted, where it would stop. She also noted that other neighbors are not requesting variances and so this variance was the only issue to be discussed. She also believed that if a house were built, it would only enhance drainage issues, not mitigate them.

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Charlie Schubert, 280 Edgewood Ln.

Mr. Schubert presented a PowerPoint to the Committee titled Save our Trees. He said he and his friends play in the area and didn't want to see trees cut down because it would destroy beauty, habitats for pollinators, and hurt the wildlife in the area including deer and turkeys. He stated the trees provide shelter, food, recreation, and beauty and he didn't want to see a house built that would set a trend. He then passed out turkey feathers.

Joe Werner, 282 Sherwood Ct.

Mr. Werner reiterated neighbor's concerns already stated. He advised that water was a significant issue. He asked that if a new street on Sherwood is constructed next year, the problem needs to be addressed prior to the road construction. Mr. Werner opposed the variance and asked that the City take care of the water issue.

After calling for final comments during the Public Hearing and seeing no one else in the audience coming forward to speak,

Chair Hubert closed the Public Hearing at 8:45 p.m.

Chair Hubert noted the concerns from the public comments and advised that the questions before the Committee were whether the variance fits within the definition of practical difficulties, under that definition, is the property owner proposing to use the property in a reasonable manner, are the circumstances unique to the property and not created by the property owner, and will the variance itself alter the characteristics of the neighborhood.

Commissioner Ramsay stated the Committee can't negate 22 peoples' concerns and opposition to this variance which should also be considered.

Commissioner Fernandez stated it is someone's right to split a lot if they have that ability but that he will vote no because it would be helpful to have a plan in place to determine reasonable use. He added that when a plan is developed, there may be additional variances requested.

Commissioner Kavanaugh confirmed with staff the cited City Code Section 153.008 and page 56 of the Comprehensive Plan. He stated the proposed use doesn't come into analysis since the Committee is tasked with looking at elements of practical difficulties and not personal preferences. The Committee can only deny the request if one or more elements are not met. Commissioner Kavanaugh asked whether the lot split was creating the issue of circumstances unique to the property. He also asked

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about the essential character of the neighborhood and whether staff looked only at proposed zoning or if staff considered other aspects from the surrounding area.

Asst. Director Boike advised that the Comprehensive Plan was a vague generalization of the City's goals and was not binding. However it does recommend maintaining tree coverage. He also noted that while this is desired, there is not Code provision that prohibits tree clearing on residential properties. Asst. Director Boike also responded that the City Attorney was asked about circumstances unique to the property and it was her opinion that the hardship is in relation to the shape of the existing lot, not the fact that the applicant is requesting to split it. He noted the pie-shaped lot, which was consistent with all cul-de-sac lots, was not created by the owner; they purchased it that way. Thus, the hardship was not created by the owner. Asst. Director Boike also stated that it is the discretion of the Committee to review the essential character of the neighborhood. Staff's view was that it is a single family neighborhood and the lot size is not uncommon to many other lots in the neighborhood, so from the practical standpoint, staff didn't believe that the lot split would have an effect on the neighborhood based on those surrounding parcels. He also responded that every variance is unique and has different variables to consider. In this case, the zoning is single family and there are several other lots in the neighborhood that also don't meet the 100 foot minimum lot width which was considered when determining character.

Commissioner Fernandez confirmed with Asst. Director Boike that if a curb cut on Sherwood was desired, the owner would need to apply for a right of way permit from the City. If the property didn't have the slope issues and Mr. Dorsey wanted access to the rear of his property, staff would review the right of way application and if it met the spacing guidelines, it would be approved. Commissioner Fernandez reiterated his point that without a plan in place, there didn't seem to be a need for a lot split.

Chair Hubert confirmed with Asst. Director Boike that if the property owner decided to demolish all of the trees even without the lot split or variance, that there was nothing in the Code to prohibit the clearing and the owner is within his right to do so. There is not City review process for clearing.

Commissioner Kavanaugh stated that when reviewing variance requests, the Committee typically reviews plans, pictures,

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drawings, etc. to see how the proposed use impacts neighboring properties. He asked whether the Committee has approved lot splits without a plan in place in the past. Asst. Director Boike stated every situation was unique and he could not think of a similar situation noting that it was within the Committees authority to request additional information if desired.

Chair Hubert explained it was worthwhile to consider what has been done in the past but that the Committee is not bound by precedent and each variance is to be considered on a case by case basis given their unique variables. In reviewing the criteria, the homeowner seems to want to use the property in a reasonable manner. If in the future a home is built, it would be reasonable given the current zoning and neighborhood. The shape of the property was not created by the homeowner thus creating a hardship to the owner and it is a circumstance unique to the property. Finally, giving a variance for a lot to be approximately 80 feet in width would not alter the essential character of the neighborhood given the fact that many of the surrounding parcels are also less than 100 feet in width.

Commissioner McPhillips confirmed with Asst. Director Boike that if the variance were approved, the City would not be able to require any future developer to place a structure toward the back of the lot since the setbacks would dictate the building footprint.

Chair Hubert noted that there was a staff condition that if a home is constructed in the future, the applicant shall submit property drainage plans which may address the neighbors' concerns.

Asst. Director Boike advised that if approving, a draft findings of fact are in the Committee's packets but if denying, findings of fact will need to be included in the motion to state which of the criteria are not being met.

ON MOTION by Fernandez, seconded by Ramsay, the Committee of Adjustments denied Case #16-04, Application for a Variance to Allow a Reduction in Minimum Lot Width for a New Lot at 260 Edgewood requested by Sylvia Dorsey due to the property owner not establishing that there are practical difficulties in complying with the zoning ordinance because without a plan in place for a proposed use to deal with tree coverage and drainage issues, the it has not been proven that the proposed use would alter the essential character of the neighborhood

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Ayes: 4 (Fernandez, Ramsay, McPhillips, Kavanaugh)

Nays: 3 (Leuer, Hubert, Nelson)

Abstain: 0

Motion to deny carried by majority vote.

Chair Hubert advised that while the Committee's decision was a final determination, the applicant could appeal the decision to the City Council.

NEW BUSINESS:

None.

OLD BUSINESS:

None.

OTHER:

None.

ADJOURNMENT:

ON MOTION of Leuer, seconded by Fernandez, the Commissioners ADJOURNED the Committee of Adjustments meeting of June 21, 2016, at 8:06 p.m. All Ayes: 7/0.